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July 2001 to June 2002

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ALBERTA LAW REFORM INSTITUTE

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THE INSTITUTE

The Institute of Law Research and Reform was established in 1968 by the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The new name "**Alberta Law Reform Institute**" was adopted in 1989.

Funding for the Institute comes primarily from the Department of Justice and the Alberta Law Foundation. The University provides the Institute with office premises and many additional services, including a cash grant.

The objectives of the Institute set out in the Founding Agreement are as follows:

RESEARCH
To conduct and direct research into law and the administration of justice.

RECOMMEND
To consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective.

PROMOTE
To promote law research and reform.

COOPERATE
For the purposes described above, to work in cooperation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.

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ACKNOWLEDGMENTS

This last year saw the seventh renewal of the founding agreement for the Alberta Law Reform Institute (ALRI). This is a remarkable record for an agency with no statutory or legislative mandate – it must depend for its continuation on its past record.

That record must pay tribute to the support of our founders and the individuals on whom ALRI frequently relies and with whom ALRI has established solid working relationships.

At the Law Society, ALRI has been provided with a ready voice to the profession. Through successive Presidents, Messrs. Macklin and Nielsen, Q.C., and the Secretary, Peter Freeman, Q.C., and now Executive Director, Don Thompson, we have been given an open and supportive welcome, and an encouraging audience before the Benchers.

At the Department of Justice, we have both formal and practical support. The Minister, the Honourable Dave Hancock, Q.C., has been open and available for discussion; and his Deputy, Mr. Terry Matchett, Q.C., has offered valuable advice on project planning and management. Our Attorney General nominees on the Board serve us faithfully and well. They are Clark Dalton, Q.C., and Bill Hurlburt, Q.C.

Our home at the University of Alberta, and particularly within the Law Centre, puts us in a centre of research excellence and provides us with ready access to other centres and institutes in the legal field. We are fortunate. The ongoing services of the University are a valuable contribution to law reform in Alberta.

There are three parties, not founders, whom I must acknowledge. The Alberta Law Foundation continues to be a major financial supporter of ALRI. Their financial and moral support is of critical importance to us. We acknowledge

the work of Tony Friend and more recently Mona Duckett, as chairs of the Foundation Board. Most particularly, we acknowledge with both gratitude and affection the day-to-day work, planning, and advice of Owen Snider and his able assistant, Diana Porter.

The Legal Education Society is sometimes a consumer, but always an interested observer of our work. We acknowledge the assistance of Hugh Robertson, Q.C., Executive Director, and Paul Wood, Director, Continuing Education, generally, and in our shared projects such as Surrogate Rules and Arbitration Clauses.

Finally, a further and crucial conduit to the profession is through the Alberta Branch of the Canadian Bar Association. Presidents Tom Achtymichuk and Virginia Engel, Q.C., and Executive Director, Terry Evenson, have been most helpful in ensuring ALRI access to the various sections and in incorporating our projects into their agenda.

To these people and to many who have assisted on advisory committees and working groups, we express a large debt of thanks.

Finally, I wish to record the work of Board, Counsel, and Support Staff. See the chart listing these people. These are the people who make ALRI work, and whose efforts bear fruit in the updating of the law and the administration of justice in Alberta. Their dedication, hard work, and creative thinking is deeply appreciated.

The year in question saw a number of significant events and achievements in the life of the Institute. They are summarized as follows:

Completion of the Project Selection Process

Last year we reported on the completion of the organizational review and the culmination of that review in the production of a Research Management Guide. We have created a consistent manageable process for the Institute to follow. The Guide represents, for the first time, an institutionally recorded description of the process of law reform, from topic suggestion through to completion of final recommendations, along with all the supporting tasks and material that accompany that work. Not only does the process produce a rational project plan which can be followed, as was the case for example in Future Income Plans, but it also produces a rational explanation of why the Institute may choose not to take on a particular topic. Two examples of this occurred in the areas of National Class Actions and Authorized Investments for Not-for-Profits. In both of these cases we were able to produce, as part of the decision-making process, the necessary background material and to make this material available on our website in circumstances when it previously would not have been available.

The last year has been a very busy one, and the Work Process Guide, in particular, has allowed us to handle an increased volume of work, and to anticipate the demands of that volume more effectively.

We are becoming more comfortable with the process of project selection and project management. It is not always easy to estimate time and work units, but both our familiarity and facility with these concepts is getting better. Certainly, we are able to involve staff in all aspects of the workload and planning, and doing so in an integrated way has had a very positive effect on the output of the Institute.

The Rules Project

Nowhere has the benefit of our project management approach been more important than the Rules Project. In the fall of 2001 we commenced a very broad consultation process, meeting with all of the regional bar associations and with approximately 40 law firms in the Edmonton and Calgary regions. The collection and collation of all of these materials and comments was a significant task, resulting in a very valuable database of information. The second challenge was to get the first working groups going — populating them, making the members aware of the process and timetable which would have to be followed, and then dealing with the substance of the subject matter falling within each of these areas. The first three major working groups all took on large and topical subjects dealing with management of litigation, discovery and evidence, and early resolution of disputes.

The first working groups are almost at the end of their work and their product will be seen in a number of consultation memoranda which will be put out for review. So far we have already produced an Issues Paper for the Legal Community, an Issues Paper for the Public, a summary of the database material, and a huge amount of unpublished research work to support each of the working groups.

New Personnel

We were very pleased that our expected additions to staff were able to join us at various stages during the year. Suzanne Condlln commenced at the beginning of September, on a .6 fte basis, and was immediately thrown into the preparation of the Issues Paper on the Rules of Court Project. Sandra Petersson joined us January 1, 2002 and commenced work on the Adverse Possession project. As we anticipated, Professor June Ross, Q.C. was seconded to the Institute from the Faculty of Law and has taken the lead role in the Rules of Court project. Her election as a bencher of the Law Society of Alberta also cements our relationship with the bar. Doris Wilson, Q.C., formerly with the firm of Bishop and McKenzie in Edmonton, joined us on contract in September 2001 to do specific work on the Rules of Court Project.

Board Changes

Doug Stollery, QC, was able to join the Board, as we anticipated, in the fall of 2001, after completion of some major arbitration work in British Columbia. We were finally able to secure a faculty replacement from the University of Alberta, and were pleased to welcome Professor Wayne Renke as the faculty representative for our May and June 2002 meetings. Professor Renke is also a Special Advisor to the Vice-President (Academic) and brings a University representation to his position on the Board.

June 2002 also marked the last meeting, for a while, for Dr. Sheilah Martin. While Dr. Martin is on sabbatical, Dean Patricia Hughes will take over the role of faculty representative for the University of Calgary.

Website

In the late spring of 2001 we rolled out the new version of our website. This has been very well received and has allowed us to accommodate much of the activity of the Rules of Court Project. We encourage as many readers as possible to visit the website, to find their way around, and to check for items of topical interest that are described there. The address is ***www.law.ualberta.ca/alri***.

Renewal of Founding Agreement

March 31, 2002, marked the seventh renewal of the five-year agreement under which the Institute operates. This renewal represents a significant vote of confidence by our founding partners — the Province, the University of Alberta, and the Law Society of Alberta. It also records a remarkable record of achievement over a 35-year period, and all those who have participated as staff, Board members, and volunteers should take some pride in that record of achievement.

Finally, notwithstanding our attempt to plan and organize our process as much as possible, it will still be necessary to respond rapidly to late-breaking items. This was particularly the case this year when we responded, on relatively short notice, to the Department of Justice Discussion Papers on the revision of conventional family law and the emerging issues of recognition of relationships.

We produced a comprehensive response, as well as a research paper on the topic of recognition of same-sex relationships, in a very short period of time, and both staff and the two counsel, Ms. Shone and Ms. Martens, who were involved are to be congratulated. Similarly, we were able to respond very quickly on the questions of jurisdiction in internet sales and e-commerce.

The Institute enjoys a remarkable relationship with its founding parties, and plays an important and integral role in the law reform process in this province. We are proud of that role and the strength of the relationship which exists. Much of that strength is based on the personal relationships that exist with our various founding parties, and we are fortunate that those individuals understand the role that the Institute can play in the law reform process, and value that contribution.

The last year has been an extremely busy one. The Rules Project has added a significant load to our project agenda, and the next two years promise to be more of the same. Despite the burdens, the challenge is the same – to make sure that the law works in an efficient and fair manner for the benefit of all Albertans.

Summer Students

Each summer we retain several students to assist with project research. This gives the students some experience in the type of research and writing we do, and assists counsel with some of the overall workload. Our students are of consistently high calibre and make a real contribution to our activities.

Summer 2001

Alicia Backman-Beharry
Paulette DeKelver
Jeremiah Kowalchuk
Simon Rabinovitch

Summer 2002

Jeff Fixsen
Jason Golbey
Chelsea McKay

Program

The Institute's program is the delivery of law reform proposals. It does so by specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.
- a project must be one that neither the political process nor the administrative process is likely to deal with effectively.
- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.
- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

Methodology

Law reform must be an interactive process. We consult closely and continuously with our intended audience, initially to identify appropriate projects, and later to obtain feedback on issues and proposals. The quality of our product is directly related to our ability to recognize the needs of our audience, and to provide a sensitive response to them.

The methodology of the program is described on charts "**Should We Adopt a Project?**" – from idea to approved Project and "**Approved Project**" from Project to Final Report. (See pages 9 and 10.)

Should We Adopt a Project?

1. Screen Suggestions

- Discard
- Describe
- Priorize
- Assign
- Criteria

2. Outline Topic Parameters

- Preliminary Review
- Define Scope
- Identify Issues
- List Contacts
- Brainstorm Idea
- Consider Methods

3. Gauge Interest

- Identify "community"
- Create Materials
- Set Response Times
- Consider Interest Level

4. Analysis of Results

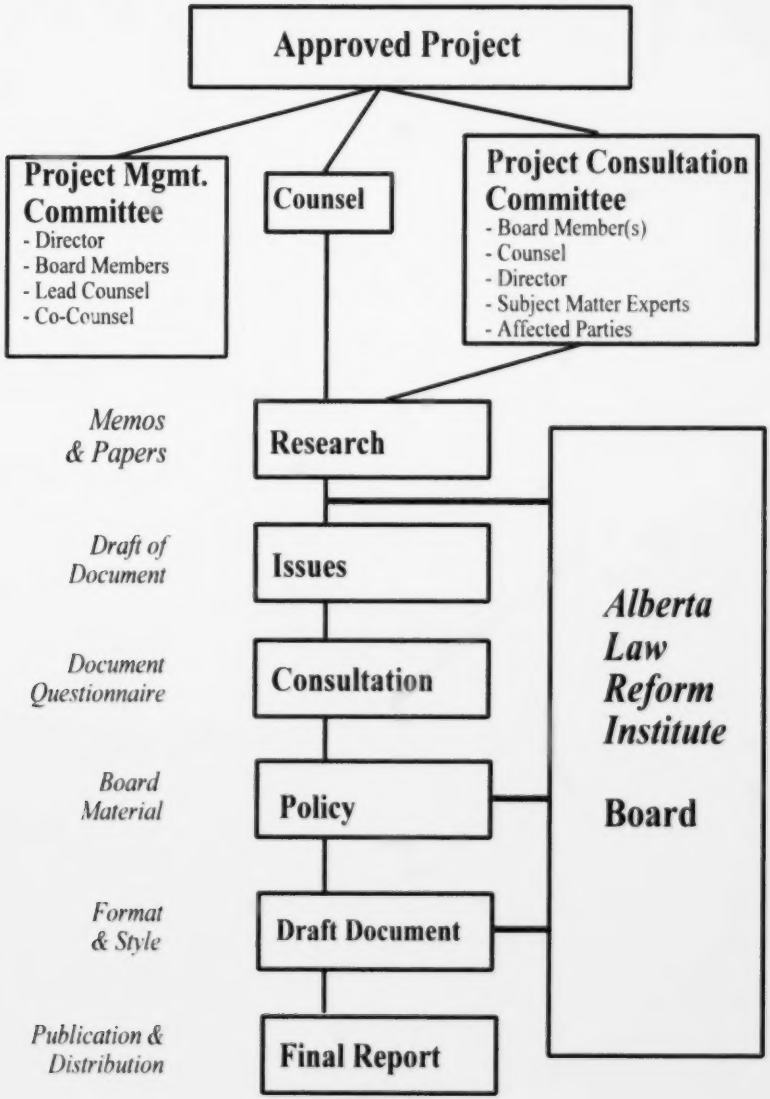
- Collect, summarize responses
- Analyze
- Assess Pros and Cons
- Decide
  - Go (onto Bus. Case Plan)
  - No Go
  - Return to Consultation
- Document Reasons

5. Business Case Plan

- Establish Plan
- Identify Timelines
- Describe Expectations
- Estimate Completion Date
- Consider Resources

6. Final Decision (Go/No Go)

- Present Findings to the Board
- Board Decision
  - Go or No Go
  - Approval of Business Plan


Approved Project
Project Mgmt. Committee
- Director
- Board Members
- Lead Counsel
- Co-Counsel
Counsel
Project Consultation Committee
- Board Member(s)
- Counsel
- Director
- Subject Matter Experts
- Affected Parties
Memos & Papers
Research
Draft of Document
Issues
Document Questionnaire
Consultation
Board Material
Policy
Format & Style
Draft Document
Publication & Distribution
Final Report
Alberta Law Reform Institute
Board

Post Report Activity

Our work does not end with the final report. Significant post-report activity is involved in:

- explanations to "client" departments,
- response to legislative and drafting requests
- assistance to implementation groups
- presentation to legal profession

While reports are under consideration, we carry out a monitoring role to ensure that recommendations are kept up to date and other developments are taken into account.

Categories of Publications

While we tend to use different types of reports at different stages, the format is not rigid. Normally research papers merely share the results of our work. For example, our report on Recognition of Rights and Obligations in Same Sex Relationships was intended primarily to inform the ongoing debate. On the other hand, our report on Referees reviewed the history and proposed a practical change which was later implemented.

Normally our reports for discussion or consultation memoranda provide all the necessary background information for the reader to provide an informed response. Occasionally we will either update or replicate that information in a final report so as to make the Recommendations a more coherent whole. For example, our Final Report on Surrogate Rules was fairly brief because it was complemented by the Practice Manual which we prepared with the Legal Education Society of Alberta. Cost of Credit Disclosure was complemented by the provisions of Part 9, *Fair Trading Act* and Cost of Credit Disclosure Regulations. Our reports on Arbitration, Limitations, and Trustee Investment Powers are much fuller, and the annotated versions of the draft statute have proven very useful in the implementation process, and in the education process for the Bar once the legislation has been passed.

Finally, it is important to note the volume of reports which are now housed on our website, which provides a single entry point to the compendium of ALRI publications.

The five main types of documents produced by the Alberta Law Reform Institute are:

RESEARCH PAPER

Shared Data and Research
Early Release

ISSUES PAPER

Develops Policy Issues
Outlines Possible Solutions
Seeks Comment and Consultation

CONSULTATION MEMORANDUM

Focussed Policy Issues
Identified and Discrete Audience
Seeks Comment Prior to Final Proposals

REPORT FOR DISCUSSION

Issues and Background
Proposed Solutions
Seeks Comment before Proceeding

FINAL REPORT

Considered Position
Draft Legislation
Submission for Action

During this year ALRI issued one Final Report, one Report for Discussion, one Issues Paper, one Research Paper, and two Consultation Memoranda. The summaries are set out below.

We also issued two Issues Papers on the Rules of Court Project – one for the public and one for the legal community. These are mounted on our website.

Final Report No. 86
Non-Resident Trustees under the Dependent Adults Act

A trustee under the *Dependent Adults Act* of Alberta handles some or all of the financial affairs of a dependent adult, depending on the terms of the trusteeship order. Usually the trustee is a spouse, adult child, sibling or other member of the dependent adult's family. More rarely, the trustee may be a trust corporation. As a last resort, the Public Trustee may be appointed.

An individual cannot be appointed as trustee under the *Dependent Adults Act* unless the individual is a resident of Alberta. The Act's prohibition of non-resident trustees creates significant practical difficulties if the only suitable or most suitable potential trustee is a non-resident or if an Alberta trustee is appointed but subsequently becomes a non-resident. We believe that these difficulties, although they arise in only a small minority of cases, are sufficient to justify providing a remedy. Further, the combination of an aging population, smaller family size and an increasingly mobile population are likely to make such difficulties more common.

It seems to us that preventing willing and capable non-resident family members from becoming trustees undermines the philosophy of the *Dependent Adults Act* that family responsibility for dependent adults should be encouraged

and facilitated as preferable to state control of people's affairs. We therefore recommend that the law be changed so that a resident of any province or territory of Canada can be appointed a trustee.

Alberta courts do not have jurisdiction over residents of other provinces and territories. Allowing non-residents to be trustees will therefore have two legal consequences for which safeguards must be put in place to address directly or indirectly:

- An Alberta court order will not be able to compel a trustee to act nor prevent the trustee from acting. So if a non-resident trustee fails to perform the trustee's duties as required (such as filing an inventory, passing accounts, etc.), the non-resident trustee (unlike a resident trustee) cannot be forced by an Alberta court order to perform the duties.

- If the non-resident trustee misappropriates the estate and an Alberta judgment for damages is obtained, an Alberta court could not order the seizure and sale of the trustee's assets located in another jurisdiction. An Alberta court controls only what is within the borders of Alberta. Enforcing an Alberta money judgment in another Canadian province or territory has become easier since the 1990 Supreme Court of Canada decision in *Morguard Investments Ltd.* v. *De Savoye*, but it still requires bringing a lawsuit in the other province or territory. Some provinces are currently in the process of adopting an improved statutory enforcement system that will make interprovincial enforcement of money judgments virtually automatic, but such legislation will not be uniform across Canada for many years. Despite these legal developments, an additional legal safeguard will be needed to address this issue.

It should be noted that, although legal consequences flow from non-residency, it does not mean that non-residents when acting as trustees are any more likely than residents to default in their duties or to mishandle or misappropriate the estate.

Despite the legal consequences of non-residency, almost all other Canadian jurisdictions allow non-residents to be appointed trustees for dependent adults. The standard safeguard used in these jurisdictions is to require non-resident trustees to provide a surety bond or some other form of security for performance of their duties. The court can order damages to be paid out of the security if the non-resident trustee misappropriates the estate. Thus, security overcomes the difficulty of enforcing a money judgment against a non-resident trustee. But security still does not enable a court to compel a non-resident trustee to act or restrain a non-resident trustee from acting. Moreover, security is expensive, difficult to obtain and problematic to receive from resident trustees who subsequently move to another province, which is why we propose a new reform approach in this area.

Our principal recommendation is that the *Dependent Adults Act* be changed so that a resident of any Canadian province or territory can be eligible for appointment as a trustee. Because of the difficulties and uncertainties of enforcing an Alberta judgment outside Canada, we do not recommend that residents of other countries be eligible.

As for the safeguards that are necessary due to the legal consequences of non-residency, we propose a new approach based on the law of interprovincial enforcement of judgments within Canada. Our goal is to make enforceable across Canada any money judgment ordered by an Alberta court against a non-resident Canadian trustee who defaults. This will protect the dependent adult by allowing damages to be recovered from the trustee's assets elsewhere in Canada, even though those assets are not within the jurisdiction of Alberta.

We recommend the following safeguards:

- In order to be appointed as a trustee, every proposed trustee must provide written, voluntary, irrevocable attornment to the jurisdiction of Alberta courts. "Attornment" is a legal concept that means the person agrees to submit to court control despite being beyond the geographical borders of the court's authority. Attornment removes the most powerful statutory defence a person can have against interprovincial enforcement of money judgments

and makes enforcement of money judgments very easy in other provinces. All proposed trustees will have to consent to attornment regardless of whether they are resident or non-resident at the date of appointment, so that the protective safeguard of attornment will be in place if a resident trustee subsequently moves from Alberta to another province or territory in Canada.

Attornment, like the use of security, cannot overcome the inability to enforce a court order compelling or restraining the actions of a non-resident trustee. An interprovincial legal mechanism to enforce these types of non-money orders simply does not currently exist at all. The Uniform Law Conference of Canada has proposed a model Act that will solve this problem and someday, if all provinces and territories adopt that model, it will be possible to enforce such orders interprovincially, thus eliminating all enforcement risks in having a non-resident trustee.

But in the meantime, a non-resident trustee who neglects or fails to file the inventory or pass accounts would have to be dealt with using an indirect (but still effective) method. An interested person who sees the dereliction of duty would simply have to start a court application to review the trusteeship order itself (rather than bring an application to get a court order forcing the trustee to perform the neglected duty). If the non-resident trustee does not cooperate with that review, the court could appoint a new trustee.

- A wider group of relatives should be notified when a non-resident is being considered for appointment than when a resident is proposed as trustee. When a non-resident is proposed as trustee, the application should be served on all persons living in Canada who would be the heirs on intestacy of the dependent adult (as if the dependent adult had just died intestate). If any of these close relatives have misgivings about having a non-resident trustee, the best time for objections to be raised is at the beginning of the appointment process, not afterwards.

- So that legal remedies against a non-resident trustee's assets may be pursued as easily as against a resident trustee's assets, no order for service ex juris should be necessary when suing a non-resident trustee. All proposed trustees will be obliged to provide a personal address for service and to update its currency as required. We also recommend some consequential provisions to facilitate service.

We do not recommend that the limited statutory role of the Public Trustee be expanded or that greater costs be imposed on the Public Trustee in relation to non-resident trustees. Therefore, in the event of the death of a non-resident trustee where no provision has been made for a replacement, the default trustee should not be the Public Trustee but rather, the dependent adult's nearest relative living in Canada. This prevents a lapse in the trusteeship while avoiding negative resource implications for the Public Trustee, who would not have to hire legal agents in another province or send its own personnel to that other province in order to determine the state of the trusteeship.

We also recommend that the limitations on the Public Trustee's statutory role in the event of trustee default be clarified with family members at the beginning of the appointment process. The family is primarily responsible for producing another private trustee to pursue legal remedies on the dependent adult's behalf, with the Public Trustee being only a trustee of last resort. Clarifying the Public Trustee's role with family members is especially important if a non-resident is to be appointed trustee. When family members assess the advantages and disadvantages of having a non-resident trustee, they should not be potentially labouring under false assumptions about who will be responsible for taking action should something go wrong.

Finally, we propose that resident trustees who were appointed before the requirement of attornment comes into force be required to consent to attornment when their trusteeship orders are reviewed or their accounts are passed. Until they provide the consent, they will be deemed to have attorned.

Report for Discussion No. 19
Order of Application of Assets in Satisfaction of Debts and Liabilities

The value of assets in most estates exceeds the testator's debts and the funeral and testamentary expenses and, therefore, the personal representative has sufficient means to pay these obligations in full. There will, however, be cases in which the size of the estate, while sufficient to pay these obligations, is not sufficient to pay these obligations as well as the gifts made in the will. Over the course of hundreds of years, the English courts developed an order in which assets of an estate can be resorted to for payment of debts and funeral and testamentary expenses. This order does not affect creditors, per se, who can attach any asset they want. It does not dictate the assets the personal representative can use to pay these obligations. But this order does determine how beneficiaries are ultimately affected by payment of these obligations. By the general principles of marshalling, if an asset from a higher class is used to pay debts and funeral and testamentary expenses, the beneficiary of such an asset can look to assets in the lower classes and receive the monetary value of the asset used to pay these obligations. The rules are very technical in nature, and many modern English texts no longer discuss these rules because they have been supplanted in England by statutory order. Alberta has no such statutory order and, therefore, the rules developed in the case law still apply.

PAYMENT OF UNSECURED DEBTS

Widdifield on Executors' Accounts, 5th ed., lists the order in which the assets of the estate can be resorted to for the payment of unsecured debts, as follows:

1. The general personal estate not bequeathed at all, or by way of residue only.
2. Real estate devised in trust to pay debts.
3. Real estate descended to the heir and not charged with payment of debts.
4. Real or personal estate charged with the payment of debts, and (as to realty) devised specifically or by way of residue, or suffered, by reason of lapsed devise, to descend; or (as to personalty) specifically bequeathed, subject to that charge.

5. General pecuniary legacies, including annuities and demonstrative legacies that have become general.
6. Specific legacies (including demonstrative legacies that so remain), specific devises and residuary devises not charged with debts, to contribute pro rata.
7. Real and personal estate over which the testator had a general power of appointment which has been expressly exercised by deed (in favour of volunteers) or by will.
8. Paraphernalia of the testator's widow.

Similar statements are found in other sources, although class 8 is not usually included in the other sources. The content of class 4 is uncertain on two accounts. First, it is uncertain whether a specific legacy that is charged with payment of debts forms part of this class. Second, it is uncertain when a direction to pay debts will be interpreted as impliedly charging real property (or personal property) with payment of debts. This order does not apply where the testator expresses a contrary intention in the will.

This archaic area of the law is badly in need of revision for the following reasons. First, the historical reasons for the development of the rules are no longer relevant with the result that the distinctions made in the rules are no longer justifiable. For example, how does one justify the fact that if the testator devises realty on trust for payment of debts, the debts must still be paid first from the personal property that passes by way of residue? Second, determining what the rules are involves reading case law developed over a 225 year period. This alone speaks of the need for a clear and simplified statutory order. Third, as one would expect, a body of case law developed over this length of time is full of contradictory decisions. In this area, the more one reads, the more confused one becomes. Fourth, the law is uncertain. What falls into class 4? What exactly is the effect of a direction to pay debts?

For the purpose of marshalling, we recommend that the order in which assets are applied in payment of unsecured debts and liabilities should be as follows:

(a) property specifically charged with the payment of debts or left on trust for the payment of debts;

(b) property passing by way of intestacy and property passing by way of residue;

(c) general gifts of property;

(d) specific gifts of property;

(e) property over which the deceased had a general power of appointment that has been expressly exercised by will.

Each class will include both personal property and real property, and no distinction should be made between the two types of property within a given class. Each asset within a given class would contribute rateably to payment of debts. To charge property with payment of debts or create a trust for payment of debts, a testator must do something more than give a general direction that debts be paid or impose a trust that the testator's debts be paid. This proposed statutory order could be varied by an expression of contrary intention by the testator.

Keep in mind that the proposed marshalling rules would not affect a creditor's right to enforce payment of the debt against any asset in the estate. Also, these rules will not determine which assets the personal representative actually uses to pay creditors because the personal representative remains entitled to satisfy creditors out of the first available moneys. The proposed marshalling rules only deal with the ultimate adjustments among the various beneficiaries after payment of debts and funeral and testamentary expenses.

PAYMENT OF SECURED DEBTS

At one time payment of secured debts was treated in the same manner as payment of unsecured debts. The devisee of mortgaged land could look to the general personal estate for payment of the debt secured by the mortgage. In the last half of the 19th century this was changed in England with the introduction of three statutes known collectively as *Locke King's Acts*. Section 40 of the *Administration of Estates Act* derives from the *Locke King's Acts*. This section provides that when a person dies possessed of an interest in property that is charged with the payment of money by way of mortgage, the interest so charged is, as between the different persons claiming through the deceased, liable primarily for payment of the charge. This general rule is subject to the contrary intention of the testator. In result, land

that is charged by a mortgage is primarily liable for the payment of the mortgage debt. This section does not, however, cover agreements for sale of land and it is not clear whether the section applies to personal property security interests.

We recommend that section 40 of the *Administration of Estates Act* be expanded to include agreements for sale of land and security interests prescribed by the *Personal Property Security Act*. We seek comment on the following issue: should property that is subject to a non-consensual security interest be primarily responsible for payment of the obligation secured by the non-consensual security interest? A non-consensual security interest is an interest in the property of the debtor that secures payment of performance of an obligation that arises by reason of common law and statutory liens, rights of distress, statutory charges, deemed trusts and statutory trusts.

INCOME TAX TRIGGERED BY DEATH OF TESTATOR

Another recurring problem arises by reason of income tax triggered by the death of the testator. The problem most frequently arises by reason of registered retirement savings plans ('RRSP'), but can also arise upon the deemed sale of land or shares or other property on the death of the testator. Several lawyers have suggested to us that the assets in the RRSP should be primarily responsible for the income tax triggered by it because this is what most testators want to happen. They point to unhappy situations in which a testator wished to benefit two children equally, by giving one the RRSP and the other cash of equal value. The income tax triggered by the deemed position of the RRSP is paid from the cash, leaving one child with substantially more, and the other with substantially less, than the testator intended. This is a matter easily dealt with at the will planning stage. The problem arises, therefore, most often in wills drafted by lay persons.

The issue is whether the majority of testators would want a specific asset that triggers income tax to be primarily responsible for payment of the income tax arising from that asset, or whether the existing default position reflects the expectation of the majority of testators. For example, do most testators want the RRSP to bear the burden of the income tax triggered by the RRSP, or do they want the residuary assets to be used to pay the resulting income taxes? What is the

expectation in respect of other assets that trigger income tax on the death of the testator? Before making a recommendation on this point we must hear from lawyers who practice in this area. This input will allow us to better evaluate whether assets that trigger income tax by reason of the deemed disposition of that asset on death should be primarily responsible for payment of that portion of the income tax.

Issues Paper No. 5
Enduring Powers of Attorney

The Alberta Law Reform Institute is considering whether the Powers of Attorney Act should provide additional safeguards against abuse of enduring powers of attorney. In order to obtain public input it has prepared an Issues Paper. Following consultation the Institute will decide whether to recommend changes in the Act.

The advantage of an enduring power of attorney is that it allows an individual to make his or her own choice of an "attorney" to look after the individual's property and financial affairs if the individual becomes unable to do so. The downside is that a dishonest attorney may steal or misuse the individual's property or money.

If an attorney abuses his or her powers, an "interested person" may bring court proceedings to remove the attorney or to require the attorney to give an accounting. The question is whether that is enough of a safeguard. An additional safeguard might be more supervision by the court, by a public official, by a family member, or by an additional attorney, or it might be better information for individuals and attorneys, a bonding requirement or a system of registration of enduring powers of attorney.

Research Paper No. 21
Recognition of Rights and Obligations in Same Sex Relationships

[1] Over the past several years the traditional form of close personal adult relationships has undergone significant changes. At one time marriage was the key indicator of an intimate and interdependent relationship between two adults. However, while marriage continues to be one indication of a close personal relationship between adults, many adults are in "marriage-like" relationships who, for a variety of reasons, have not formally married. The law recognizes the value of close personal relationships, and in many cases directly supports them. The government uses these relationships as one way of organizing social policies and delivering social programs through legislation.[1] However, in many areas the law has not kept pace with the changes in the forms of close adult personal relationships as many laws do not recognize "marriage-like" relationships.

[2] In some instances where the law does not give legal recognition to the changing nature of personal relationships, people in "marriage-like" relationships have challenged many statutes, both provincially and federally, under section 15(1) (the equality guarantee) of the *Canadian Charter of Rights and Freedoms*. In these challenges individuals claimed that certain legislative provisions discriminated against them by failing to recognize their personal relationships. Challenges have been brought by both opposite sex and same sex individuals who cohabit in marriage-like relationships. As a result of these challenges, same sex couples are now included in many legislative provisions which provide rights or obligations to married people or opposite sex common law couples. Despite these changes which have been initiated through legal action, the provincial legislatures and Parliament have been slow to make widespread reforms to laws to recognize relationships comprised of individuals of the same sex.

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[1] Law Commission of Canada, *Recognizing and Supporting Close Personal Relationships Between Adults* (Discussion Paper) (Ottawa: Law Commission of Canada, 2000).

[3] Thus, the changing nature of personal relationships gives rise to two issues of legislative conformity with the *Charter*:

(1) Does the legislation in issue discriminate on the basis of marital status; and

(2) If so, what constitutes a "marriage-like" relationship?

[4] In 1995 the Supreme Court of Canada held that certain legislated rights which are given to married couples must also be afforded to heterosexual common law couples.[2] In 1999 the Supreme Court of Canada found that legislation which denied individuals in same sex relationships access to court-enforced spousal support benefits which were availed to opposite sex common law couples violated the equality guarantee in section 15(1) of the *Charter*.[3] The Court further held that the legislation was not saved under section 1 of the *Charter*. The Court ordered that the legislation be amended to include same sex couples. The Supreme Court decision does not give special benefits or treatment to people in same sex relationships; rather, it merely recognized that same sex couples are entitled to the same rights as heterosexual common law couples.

[5] The Supreme Court of Canada decision in *M.* v. *H.* clearly impacts other statutes that distribute benefits, rights, and responsibilities on the basis of a definition of "spouse" and which exclude same-sex couples from such benefits, rights and responsibilities.[4] It is now difficult for a government to justify discriminatory legislation that denies same sex partners rights to which opposite sex, common law couples are entitled.[5] It is therefore incumbent upon the federal

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[2] *Miron* v. *Trudel*, (1995), 124 D.L.R (4th) 693 (S.C.C.).

[3] *M.* v. *H.* (1999), 171 D.L.R. (4th) 577 (S.C.C.) [hereinafter *M.* v. *H.*]. This decision concerned the ability of a person in a same sex relationship to claim spousal support under the Ontario *Family Law Act*, R.S.O. 1990, c. F-3, s. 29 [hereinafter *FLA*]. The *FLA* defined "spouse" for the purpose of spousal support as "includ[ing]...either of a man and woman who are not married to each other and have cohabited, (a) continuously for a period of not less than three years, or (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child." This decision is discussed in detail in Chapter 2 below.

[4] *Ibid.* at 645.

[5] N. Bala, "Alternatives for Extending Spousal Status in Canada" (2000) 17 Can. J. Fam. L. 169 at 175.

and provincial governments to respond to the Supreme Court directive by taking legislative action to ensure that individuals in same sex relationships are afforded equal treatment under the law with others who are in marriage-like relationships.

[6] While the federal government and several other provinces have made various reforms in response to the Supreme Court decision in *M.* v. *H.*, Alberta has not addressed the issue through any comprehensive legislative action.[6]

Consultation Memorandum No. 10
Standardizing Limitation Periods for Actions on Insurance Contracts

History and scope of project

[1] When the new *Limitations Act*[1] came into force on March 1, 1999, a number of changes were made to the limitations law in Alberta. One change relates to the ability to amend limitation periods by contract. While the old law allowed contractual change up or down, the new law provides only for "extension" by express contract. The intended policy is clear from the comments of the Bill sponsor in Hansard. Whether the policy is effective is a matter of debate.

[2] Assume for the moment that a limitation period cannot be reduced by contract. What is the effect on provisions in insurance contracts? Some limitation periods are in the *Insurance Act*[2] and are therefore valid; some are in statutory condition and are therefore valid; but some are merely in the insurance contract. The validity of these conditions is in question.

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[6] In January of 2002 Alberta Justice released a Public Workbook and Technical Workbook entitled *Alberta Family Law Reform*. These are consultation documents which address issues about, *inter alia*, same sex relationships. At the time of publication consultations on these documents are ongoing.

[1] S.A. 1996, c. L-15.1

[2] S.A. 1999, c. I-5.1.

[3] While considering this narrow issue and the potential responses, it quickly became apparent that the entire area of limitation periods for actions on insurance contracts is in a state of confusion. There is no rational basis underlying the limitation periods for bringing actions against insurers; different limitation periods apply to different types of insurance policies. These disparate limitation periods have caused a considerable amount of litigation. Further, several of the limitation periods that the *Insurance Act* prescribes are inconsistent with the general limitation periods in the *Limitations Act*. This is contrary to one of the primary purposes of the *Limitations Act* which is to provide uniform limitation periods for all causes of action unless there are principled reasons to justify a departure from the Act.

[4] In light of the problems identified above, the scope of this project has been expanded to address the following issues which relate to rationalizing limitation periods for actions against insurers:

> (1) Should the limitation periods for all insurance contracts be centralized in either the *Limitations Act* or the *Insurance Act*?
>
> (2) Should the limitation periods for actions on all types of insurance contracts be standardized?
>
> (3) Assuming that the limitation periods should be standardized, should insurance contracts be subject to the limitation periods in the *Limitations Act*, or should they be subject to different limitation periods?
>
> (4) When should the limitation period for actions against insurers commence?
>
> (5) If the limitation periods for actions on insurance contracts should not be standardized, should either the *Insurance Act* or the *Limitations Act* be amended to enable insurance companies to contractually impose shorter limitation periods in insurance contracts?

Consultation Memorandum No. 11
Creditor Access to Future Income Plans

Scope and Purpose of the Project

Should registered retirement savings plans (RRSPs), deferred profit-sharing plans (DPSPs) and registered retirement income funds (RRIFs) be exempt from the remedies of creditors? The issue is significant because of the policy questions involved and the large sums of money invested annually in retirement savings plans. The Institute has decided to review the exemption of such plans in Alberta, and to consider reports on the subject by the Uniform Law Conference of Canada and the Personal Insolvency Task Force. The Institute will publish a report, including recommendations for change. Chapter 1 of this consultation memorandum discusses the scope of this project.

Conflicting Policy

Canadian law espouses two major legal policies relevant to the present study. They are (1) the legal encouragement to save for retirement, evidenced by the tax deferral status of RRSPs, DPSPs and RRIFs; and (2) the necessity for an effective and efficient system for the enforcement of money judgments. These policies come into direct conflict in any project to exempt RRSPs and the like from creditors' remedies. Chapter 2 of this consultation memorandum outlines these two policies, and how the law in Canada and elsewhere has reconciled them.

Alberta Law

Alberta law permits a judgment creditor to enforce a money judgment against the RRSP of the debtor, that is, to divert the debtor's retirement savings to payment of debts. However, most pensions are exempt from enforcement, as are most RRSPs and annuities purchased from insurance companies. It is non-insurance RRSPs which are fully available to creditors. There is an apparent unfairness in this exposure of non-insurance RRSPs, compared to the virtually complete protection of most insurance RRSPs and annuities, and most pensions. Similar rules apply to DPSPs and RRIFs.

When pensions, annuities, RRSPs and RRIFs start to make payments to the depositor, the creditor's appropriate remedy is to attach the payments. Exemptions are again an issue. Most pension statutes expressly prohibit garnishment of pension benefits or payments. Insurance legislation will in some cases also exempt payments. However, payments out of a non-insurance RRSP or RRIF (after tax is deducted) will be fully garnishable. Again, creditors' remedies law treats differently payments which appear to be similar.

The above discussion assumes that the depositor-debtor is alive. When he or she dies, the situation becomes more complex. The beneficiary of the RRSP, DPSP or RRIF claims payment of the proceeds of the plan. The beneficiary's argument is usually that the plan does not become part of the depositor's estate but passes directly to the beneficiary. The beneficiary will be confronted by the creditors of the depositor's estate who claim that the proceeds of the plan do become part of the depositor's estate and are therefore liable to pay the creditors' claims before anything is paid to the beneficiary. A third claimant will be the creditors of *the beneficiary* who, at some stage, want the proceeds to satisfy their claims. The result is a free-for-all scramble for the plan proceeds which has caused the courts much trouble.

The Issues

The following is a summary of some of the issues raised in the Consultation Memorandum. The issues are discussed more fully in chapter 3 of the memorandum.

Issue 1 asks the threshold question whether Alberta law should recognize *any* exemption of RRSPs, DPSPs and RRIFs from creditors' remedies.

Proponents of an exemption argue that:

(1) Canadian law recognizes saving for retirement as a value worthy of protection and encouragement;

(2) pensions are exempt now and in the foreseeable future;

(3) pensions and RRSPs are sufficiently similar that they deserve similar treatment in creditors' remedies law; and

(4) the practical consequences of such an exemption are not significant.

Opponents of the proposal attack the assumptions underlying the exemption. They argue that:

(1) Some debtors will abuse an exemption of retirement savings plans.

(2) Pensions and RRSPs are different. Pension funds are locked in by legislation and are dedicated to retirement. Most RRSPs can be collapsed at will by the depositor, and are closer to tax sheltered bank accounts which can provide funds for non-retirement purposes.

(3) Saving for retirement should not be favoured by the law to the detriment of creditors who may be relying on prompt payment of their claims for their own retirement plans.

Issues 2 to 6–If it is concluded that RRSPs, DPSPs and RRIFs should enjoy some exemption from creditors' remedies, the next question is whether the exemption should be total (**Issue 2**) or should be surrounded by limits intended to lessen the possibility of abuse. Possible limits include:

- fixing a dollar cap on the amount of an RRSP, DPSP or RRIF which is exempt from enforcement (**Issue 3a**),
- limiting the exemption to RRSPs, DPSPs and RRIFs that are already locked in, and plans which the debtor elects to lock in at the time of execution (**Issue 3b**),
- permitting the creditor to claw back payments made into the plan during a fixed period (say, 3 years) before the date of the issue of the writ of enforcement (or an earlier date) (**Issue 3c**),
- making payments out of an RRSP, DPSP or RRIF garnishable subject to exemptions similar to those applying to wages and salaries (**Issue 4**), and
- giving the court a discretion to increase, decrease or eliminate the exemption of RRSPs, DPSPs and RRIFs from enforcement and garnishment, subject to a list of factors to be considered in each case (**Issue 5**),
- creating other anti-abuse safeguards (**Issue 6**).

Issues 7 to 13–Other issues to be considered in this project include the following:

- Should there be different exemptions of RRSPs, DPSPs and RRIFs from enforcement and garnishment, depending on whether the plans are offered by insurance or non-insurance vendors? (**Issue 7**)
- If the exemption of such plans is the same for insurance and non-insurance products, should the new exemption be limited to plans which name a beneficiary and, if so, to family beneficiaries as in s. 580 of the present *Insurance Act*? (**Issue 8**)
- Should RRSPs, DPSPs and RRIFs and the proceeds from such plans be exempt from the creditors of the deceased depositor's estate? (**Issue 9**)
- Should such plans and their proceeds be exempt from the creditors of the beneficiary named in the plans? (**Issue 10**)
- Should the Alberta exemption of RRSPs, DPSPs and RRIFs follow national models like the Uniform Law Conference of Canada uniform bill, or the Personal Insolvency Task Force discussion paper, both of which propose differing exemptions of such plans? (**Issue 11**)
- Should the new exemption provision include locked-in retirement accounts (LIRAs), life income funds (LIFs) and locked-in retirement income funds (LRIFs), and payments out of such plans, despite their inclusion (in part) in Alberta pensions legislation? (**Issue 12**)
- Should any new exemptions legislation be publicized well in advance of the proclamation date so that creditors who have relied on the debtor's RRSP, DPSP or RRIF can alter their plans? (**Issue 13**)

Adverse Possession and Mistaken Improvements to Land

Alberta is unique among Canadian jurisdictions in having retained adverse possession alongside a Torrens system of land registration. Primarily a common law doctrine, but bordered by limitations and land titles legislation, adverse possession is thought to be a complex and somewhat archaic doctrine. In the Report for Discussion No. 4, *Limitations*, we recommended that the doctrine be abolished. However, Final Report No. 55 deferred the question of what to do about adverse possession to a later date. The subsequent coming into force of the new *Limitations Act* has raised new concerns about the current state of the law, in particular the effect of repealing s. 44 of the old *Limitation of Actions Act*. That provision automatically extinguished a land owner's rights and title when the 10 year limitation period expired. We are currently in the process of preparing a paper that outlines the current state of the law of adverse possession in Alberta. As a necessary step to understanding whether and how the *Limitations Act* may have changed the law, the paper also examines how adverse possession operated in the past and how Alberta courts narrowed its application to preclude its development as an exception to indefeasibility.

Recognising that disputes about the ownership and use of land are inevitable, particularly between adjoining properties, the law needs to provide an efficient mechanism for their fair and predictable resolution. The facts of an adverse possession situation will often also trigger a claim for mistaken improvements to land under s. 69 of the *Law of Property Act*. We have included s. 69 claims in our study of adverse possession, both as a tool for comparison, and to ensure a balanced spectrum of remedies in response to similar facts. As with adverse possession, the paper reviews the past and present operation of s. 69, including the effect of the new *Limitations Act*.

Class Actions and National Class Actions

We issued Report No. 85 on *Class Actions* in December 2000. In our report, we recommended that Alberta enact modern class actions legislation that is similar to the legislation recommended by the Uniform Law Conference of Canada. In December 2000, modern class actions statutes had been enacted in Quebec, Ontario and British Columbia, and recommended for enactment by statute in Manitoba and inclusion in the rules of the Federal Court of Canada. In 2001, two more provinces – Saskatchewan and Newfoundland – enacted modern statutes and the proposed Federal Court rules were gazetted.

In July 2001, in the case of *Western Canadian Shopping Centres* v. *Dutton*, the Supreme Court of Canada held that in the absence of modern class actions legislation, Alberta Rule 42 – the historic representative action rule – requires that judges use their inherent jurisdiction over procedures to fashion class action proceedings similar to the proceedings set out in modern class actions legislation enacted elsewhere in Canada. In expanding the potential range of the historic representative action rule, this judgment changed the class actions landscape in Canada significantly. Nevertheless, it does not resolve all of the issues dealt with in modern statutes. As the Supreme Court itself commented, a legislative framework clearly would be advantageous.

It is our understanding that Alberta Justice has placed class actions on its list for legislative action but that, at this point in time, no target date for the enactment of legislation has been set.

The developments since December 2000 are reported in two papers prepared by ALRI counsel in the current reporting year: "Facilitating Access to the Courts Through Class Actions: Canadian Developments," 4 *News & Views on Civil Justice* 3, published by the Canadian Forum on Civil Justice; and "Scoping Out Alberta's Proposed Class Action Legislation," presented at The Canadian Institute Conference on Litigating Class Actions – The Roadmap for Bringing and Defending Class Actions in Canada held in Calgary May 30-31, 2002, and posted

on our website at ***www.law.ualberta.ca/alri***. We continue to monitor developments relating to class actions.

National Class Actions

This is another issue that we decided not to undertake as a project. An updated version of the preliminary research and reasons for our decision will be posted on our website.

Creditor Access to Future Income Plans

Should registered retirement savings plans (RRSPs), deferred profit-sharing plans (DPSPs) and registered retirement income funds (RRIFs) be exempt from the remedies of creditors? The issue is significant because of the policy questions involved and the large sums of money invested annually in retirement savings plans. The Institute has undertaken a project on the subject. In June, 2002, the Institute published Consultation Memorandum No. 11: *Creditor Access to Future Income Plans*. The memorandum outlines previous studies by the Uniform Law Conference of Canada and the Personal Insolvency Task Force created by the Superintendent of Bankruptcy. It then sets out the principal issues to be decided in any attempt to reform this area of law.

The threshold question raised in the memorandum is whether Alberta law should recognize any exemption of RRSPs, DPSPs and RRIFs from creditors' remedies. If it is decided that some exemption of these plans is justified, the next group of issues asks whether the exemption should be total or surrounded by limits intended to lessen the possibility of abuse, such as a dollar cap, a limit of the exemption to locked-in plans, or a right in the creditor to claw back payments made into the plan shortly before the creditor launched collection proceedings. An alternative is to give the court a discretion to vary or eliminate the exemption when asked to do so by a party to the dispute. Several other issues are raised in the memorandum, including the vexed question of the treatment of RRSPs, DPSPs and RRIFs in the estate of the debtor-depositor. The competition among the beneficiary

of the future income plan, creditors of the estate, and creditors of the beneficiary has resulted in conflicting cases in several Canadian jurisdictions.

The Alberta Law Reform Institute distributed the consultation memorandum widely during the summer; it is available on the Institute's website ***http://www.law.ualberta.ca/alri/pdfs/cnslt_memo/cm011.pdf.*** The Institute has received many helpful comments on the memorandum. The intention is to consider this feedback carefully and write a final report which should be published in early 2003.

E-Commerce

The Director continues to work closely with the Department of Government Services on issues relating to electronic commerce. The *Electronic Transactions Act* is modelled after the Uniform Law Conference draft act of the same name, and the Institute, through the Director, was integrally involved in the lead up to the enactment of that legislation. Similarly, the Institute has been involved in the further work on internet sales protocol and the questions of jurisdiction and choice of law in electronic transactions generally. The most recent involvement centres around the work of the joint committee of the Uniform Law Conference and the Consumer Measures Committee of the Internal Trade Agreement which has prepared proposals for internet sales jurisdiction and choice of law rules.

Enduring Powers of Attorney

The *Powers of Attorney Act* of 1991 gives validity to "enduring powers of attorney" of two kinds: "continuing powers of attorney" which continue in effect despite the supervening incapacity or infirmity of the donor, and "springing" powers of attorney, which come into effect on a donor's incapacity or infirmity. The availability of enduring powers of attorney has proved to be of great value, as

it enables individuals to make binding arrangements for the management of their affairs if they become incapable of managing those affairs themselves.

The downside of a power of attorney which remains in force, or comes into force, on the donor's incapacity is that a dishonest attorney may use the donor's money or property for purposes other than the protection of the donor's interests. The only protection against abuse at the time of execution of an enduring power of attorney is that it be signed before a witness. The only protection against abuse at the time of the donor's incapacity is that incapacity is to be determined by a person or persons named in the EPA, or, failing such nomination, by two medical practitioners. The only protection against actual abuse by an attorney under an EPA is that an "interested person" may apply to the Court of Queen's Bench for an order requiring the attorney to pass accounts or for an order terminating the power of attorney. On a termination application, the Court may require the "interested person" to apply for a trusteeship under the *Dependent Adults Act* and may appoint an interim trustee.

EPAs are private matters. No one knows how many have been signed or how many have come into force. Anecdotal evidence from other jurisdictions and from Alberta lawyers and others who are concerned with elder abuse suggests that abuse does occur in a small percentage of EPA cases.

In February 2002, the Institute published its Issues Paper No. 5, *Enduring Powers of Attorney*. It was sent to the Institute's general mailing list and specifically to Alberta legal organizations which are likely to have an interest in the subject. It was also sent to the Public Trustee and to the Edmonton Elder Abuse Consultation team, and meetings were held with both. This consultation confirmed that there is a problem which is sufficient to suggest that something should be done about it. Many suggestions for additional safeguards were made. These include such things as: public information systems; a solicitor's or notary's certificate that the donor understood the EPA; a registration requirement with some supervision; accounting to an official such as the Public Trustee or to a relative of the donor. On the other hand, some consultants thought that this is not a sufficient problem to require action, and more cautioned against making safeguards so cumbersome that

donors will be inhibited from using EPAs where they would be useful, or prospective attorneys will be inhibited from undertaking the duties of an attorney.

The Institute is continuing to consider where the proper balance lies between the protection of EPA donors against EPA abuse, on the one hand, and, on the other, maintaining the EPA as a useful device enabling donors to arrange to have their affairs managed by attorneys whom they know and trust and to have their privacy respected. A final report will be issued.

Family Law Reform Project (Review of Domestic Relations Act)

As reported in our previous Annual Report, in October 1998, we issued a boxed set of four Reports for Discussion (RFDs) containing recommendations for family law reform: RFD 18.1, *Overview*; RFD 18.2, *Spousal Support*; RFD 18.3, *Child Support*; and RFD 18.4, *Child Guardianship, Custody and Access*. These reports continued the work we commenced on the Domestic Relations Act, Alberta's principal family law statute, in March 1993 when we issued Report No. 65 on *Family Relationships: Obsolete Actions*. Taken together, the recommendations in these reports cover the policy areas necessary to enact a new family law statute for Alberta which would replace the substantive law provisions in the *Domestic Relations Act*, the *Parentage and Maintenance Act* and Part IV of the *Family Court Act*.

In January 2002, Alberta Justice (AJ) conducted a consultation on its project, Alberta Family Law Reform 2002. The consultation was based on two workbooks, one public, the other technical. We were pleased to see that several of our publications on family law formed the basis for AJ's proposals and the issues on which AJ chose to consult. In particular, the AJ workbooks drew on our boxed set of RFDs and Report No. 65. They also drew on Final Report No. 83, *Division of Matrimonial Property on Death* (May 2000); Final Report No. 78, *Reform of the Intestate Succession Act* (June 1999); and Report No. 53, *Toward Reform of the Law Relating to Cohabitation Outside Marriage* (June 1989).

Our formal response to the AJ consultation is posted on our website at ***www.law.ualberta.ca/alri***. We also participated in AJ invitational forums held in Calgary and Edmonton in March 2002.

Fatal Accidents Act

The provisions of Section 8 of the *Fatal Accidents Act* came under review for two reasons. First, the interconnection between the automatic benefits under Section 8 and the proposals to eliminate cause of action for loss of chance of future earnings, lead to suggestions that the Section 8 benefits should be increased. Second, the definitions of persons entitled to the automatic benefits of Section 8 came under scrutiny as a result of a decision in which Section 15 of the *Charter* was used to question the definition of claimants.

As a result, the Institute provided advice to the Minister as to the implications of these two areas and the appropriate response to them. Amendments to the *Survival of Actions* and the *Fatal Accidents Act* were passed by the Legislature at the Spring 2002 session. However, a last minute House Amendment to the *Fatal Accidents Act* has raised some issues which were neither recommended nor anticipated in the original advice. As a result, both of the legislative amendments remain unproclaimed while these matters are sorted out.

Insurance Contract Conditions

In January 2002 the Institute published Consultation Memorandum No.10: *Standardizing Limitation Periods for Actions on Insurance Contracts*. Currently there are different limitation periods for bringing actions against insurers for breaching the terms of insurance policies. Different limitation periods are found in the *Insurance Act*, the *Limitations Act*, and in the contractual terms of insurance policies. The limitation period also is dependant upon the nature of the peril which is insured. This consultation memorandum seeks input from interested parties as to

whether there should be a uniform limitation period for actions against insurers, and if so, how this would best be accomplished.

Investment by Non-Profit Entities

We decided not to undertake a project on the investment standards that apply to non-profit entities having charitable or other public purposes. We did so after having completed preliminary research into the question. The results of our preliminary research and the reasons for our decision are posted on our website at ***www.law.ualberta.ca/alri*** (30 pp.).

Marshalling Rules

We published a Report for Discussion No. 19, *Order of Application of Assets in Satisfaction of Debts and Liabilities* in September 2001. As is to be expected with a very technical area of the law, the response has been limited, but what we have received has been very supportive of the rationalization of this area of law. Our original plan was that this area would be incorporated into a consolidated succession legislation. However, we have amended that plan so as first to provide a road map for the legislation, and then later to review the substantive content of some significant areas. We have already prepared Reports for Discussion in three areas, one being the marshalling rules, the other being the question of dower, and the third the reform of the *Intestate Succession Act*. The latter, represented by our Report No. 78 is ready for enactment. Marshalling rules and dower issues are likely to be able to proceed to final report very quickly. We will probably produce a composite final report supplementary to the consolidation proposals finalizing our recommendations on marshalling rules and dower.

Matrimonial Property Act

The Institute has done some preliminary consultation with members of the Alberta family law bar and has ascertained that there is a need to look at several issues arising from the *Matrimonial Property Act*, which has not been substantially reformed for almost 25 years. Significant issues include whether the Act should apply to common law couples; whether property should be valued as of date of separation or date of trial; defining "matrimonial property;" addressing matrimonial debt; addressing corporate assets and adding corporations as parties to matrimonial action; adopting a process which allows a court to appoint an independent valuator if the parties cannot agree on the value of property.

Non-Resident Dependent Adult Trustees

We published our Final Report No. 86 on *Non-resident Trustees under the Dependent Adults Act* in January 2002. This report recommends that the law should be changed so that a resident of any Canadian province or territory is eligible for appointment as a trustee, not just residents of Alberta. We propose a new approach to the creation of safeguards against the legal consequences of non-residency. Proposed trustees will provide written, irrevocable attornment to the jurisdiction of the Alberta courts, so that money judgments against them will be enforceable across Canada. Other proposed reforms include giving wider notice to relatives when a non-resident is proposed as trustee and removing the need for an order of service *ex juris* when suing a non-resident trustee.

Relationships – Charter Update

In January, 2002 the Institute published Research Paper No. 21: *Recognition of Rights and Obligations in Same Sex Relationships*. Over the past decade, same sex individuals who cohabit in marriage-like relationships have brought numerous challenges pursuant to the *Charter of Rights and Freedoms* on the basis that

certain legislative provisions discriminate against them by failing to recognize their relationships. Recently the Supreme Court of Canada held that legislation which granted spousal support rights to opposite sex couples but not to individuals in same sex relationships was discriminatory. This decision impacts other legislation which does not recognize same sex relationships. As a result of the legal challenges and the Supreme Court decision, the federal government and several provinces have now included same sex couples in many legislative provisions which impose rights or obligations on married or opposite sex common law couples. To date Alberta has yet to take comprehensive legislative action in this area. This research paper examines the actions which other jurisdictions have taken to extend legal rights and obligations to same sex couples, and discusses whether the different types of reforms are likely to survive future *Charter* challenges.

Rules of Court

The Rules Project is a three-year project which is undertaking a major review of the Alberta Rules of Court with a view to producing recommendations for a new set of Rules in 2004. The Project is funded by the Alberta Law Reform Institute (ALRI), the Alberta Department of Justice, the Law Society of Alberta and the Alberta Law Foundation, and is managed by ALRI.

Overall leadership and direction of the Rules Project is the responsibility of the Project Steering Committee.

Project Objectives

While they are subject to an ongoing process of amendment, the Rules have not been comprehensively revised since 1968. There is a need for rewriting that has arisen over the course of this lengthy period. Further, since 1968, and particularly in the last decade, concerns have been raised as to the timeliness, affordability and understandability of civil court proceedings. Reforms have been adopted to address these issues, some as amendments to the Rules, others by other means.

The Alberta situation is best understood if looked at in the larger context of rules revision and civil justice reform. ALRI research commenced by identifying projects in other jurisdictions involving rules or civil justice reform and gathering information about the content of and process employed in those projects. A comprehensive rules revision was completed in British Columbia in 1977 and in Ontario in 1985. The most recent comprehensive revision was to the Federal Court rules in 1998. In addition, in recent years there have been a number of civil justice reform projects, including Ontario's Civil Justice Review, 1996, Lord Woolf's report on the English system: Access to Justice, 1996, and the Canadian Bar Association's Report of the Task Force on Systems of Civil Justice, 1996.

These reform projects focus on the issues of delay, cost and lack of public understanding of civil justice systems, with the attendant issues of inaccessibility and mistrust of the systems. The reports focus on aspects of procedure that are identified with the issues of cost and delay (notably discovery and expert evidence) and on proposed resolutions to these problems. The proposals include the promotion of early settlement, notably through the incorporation of ADR techniques, employment of different "tracks" for litigation together with caseflow management, and judicial case management of complex cases. These same reform areas are reflected in recent Alberta rules changes (e.g., changes to discovery rules and streamlined procedure) and practice notes.

The Rules Project Steering Committee has approved Project Objectives that address both the need for rewriting of the Rules and reform issues. The objectives of maximizing the Rules' clarity and useability are goals associated with the "rewriting" of Rules. Such objectives formed a significant part of the impetus for this project. Consultations with the bar support the view that these are essential and central, although not exclusive, goals. The objectives of maximizing the Rules' effectiveness and their advancement of a fair, accessible, timely and cost effective civil justice system, involve "reforming," or at least "rethinking," the Rules. Consultations with the legal community indicate acceptance that these goals are also appropriately included in the Rules Project.

Consultation Process

1. Consultation with the Legal Community

Consultation with the legal community took the form of meetings with local bar associations throughout the province and meetings with law firms and Canadian Bar Association sections in Edmonton and Calgary. An Issues Paper for the Legal Community was distributed which described the Rules Project, raised a number of issues, and sought input. That input, whether in the form of letters, e-mail, or notes from meetings, has been categorized and entered into a database. Information from the database is provided to the Working Committees that are described below. Further, a summary Report on the Legal Consultation has been prepared and is available on our website (www.law.ualberta.ca/alri).

2. Consultation with the Public

Consultation with the public is also under way. A Public Consultation Paper and Questionnaire has been prepared and distributed by a number of means. It was published in the February/March 2002 edition of *Law Now* magazine. Copies were made available for pickup at courthouse counters and Legal Aid offices. MLAs were provided with copies for distribution to interested persons. Advocacy groups and other organizations with interests that relate to the civil justice system received copies, as did lawyers on the Rules Project contact list, who were asked to pass them on to clients. The document was available from ALRI in hard copy and was posted as a form on our website.

The deadline for the return of questionnaires was June 30, 2002. The responses will be collated and a report prepared by a consulting firm. The report will be provided to the Working Committees and made available to all interested persons.

Project Organization

Initial Working Committees

The Steering Committee has adopted an organizational structure and approach aimed at ensuring that the Rules Project is not only consultative, but collaborative, directly involving a large number of persons with a diversity of experience and perspectives. The committee structure reflects the "rewriting" and "rethinking"

objectives of the Project, and ensures that specialized topics will be reviewed by persons with relevant experience. To date, the General Rules Rewrite Committee and the "Rethink" Committees dealing with Early Resolution of Disputes, Management of Litigation and Discovery and Evidence, have been created.

Reform topics have been separated from the overall revision of the Rules of Court. The "Rethink" Committees will address those areas in which reform issues have been at the forefront. Where reforms have already been adopted, these will be reviewed and evaluated. Reforms not yet adopted in Alberta may also be considered for inclusion in the Rules.

The General Rewrite Committee will deal with topics in which, it is thought, the primary focus will be rewriting. The inclusion of a topic in the rewrite category does not preclude review of policy and practice issues related to that topic, it simply indicates an educated guess as to the likely need for a substantial rethinking of policy and practice issues. The General Rewrite Committee also ensures that there will be a comprehensive review of the Rules, as it will have the responsibility of dealing with all Rules not assigned to a specialized committee.

Process for Developing Policy Recommendations

The major task for Working Committees is the development of policy recommendations regarding each of the topics included in their mandates. These policy recommendations will be written up by ALRI counsel in the form of Consultation Memoranda and distributed to the bar and bench for feedback. The committees will subsequently review the feedback, and approve drafting instructions and draft rules.

In developing policy recommendations each Working Committee will review comments received through the Legal and Public Consultations described above.

Succession Project

Currently the law of succession in Alberta is scattered among many different statutes. The Succession Consolidation project will:

(1) identify the existing statutes and provisions concerning succession;

(2) recommend that statutes and provisions relating exclusively to the law of succession be consolidated in a single Act so they may be more easily located and used. Our report will specify, in narrative form, which existing statutes and statutory provisions should be included in, or excluded from, such a consolidation;

(3) recommend that the consolidating Act also implement all related recommendations for reform of succession law previously made by ALRI (for example, recommendations concerning survivorship, beneficiary designations, intestacy, non-compliance with wills formalities, effect of divorce on wills and division of matrimonial property on death).

While these previous ALRI recommendations will affect some areas of the consolidating act, other components of the proposed consolidation will not yet have been scrutinized for reform. Following completion of the Succession Consolidation project, ALRI will undertake a series of further projects to recommend substantive reform in the remaining areas of succession law. These further projects will be tightly focussed on major individual issues or clusters of issues within such areas as wills, administration of estates, family relief and effect of beneficiary designations.

Uniform Enforcement of Judgments Act & Court Jurisdiction and Proceedings Transfer Act

The topics of enforcement of judgments and of jurisdiction have been the subject of significant work through the Uniform Law Conference over a number of years.

The topic was first suggested when the Director was chair of the Civil Section, and the Director was a member of the working group which produced draft legislation on Uniform Enforcement of Canadian Judgments and Court Jurisdiction and Proceedings Transfer. Other provinces have enacted these pieces of legislation as they became available, but Alberta has said that it wished to review the whole package once the package was complete. The element that is still missing is the element of enforcement of foreign judgments. It was anticipated that that would be finalized for the 2001 Uniform Law Conference, but the latest estimate is that that legislation will be complete for Uniform Law Conference purposes by November 15, 2002. The Director has also been a member on the working group on the topic of enforcement of foreign judgements.

Once the third element is complete, Alberta will have a comprehensive package of draft legislation to deal with enforcement of Canadian and foreign judgments, and to rationalize the rules on the basis of which Alberta courts assume the authority to hear disputes. It will also have a modernized version of our rules relating to *forum conveniens*, allowing a direct and proactive method by which an Alberta court may defer to a more appropriate forum for the hearing of a dispute. It is understood that all of these topics will be on the legislative agenda for Spring of 2004.

	FINAL REPORT	ENACTMENT
1*	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, S.A. 1969, c. 22 (now Victims of Crime Act, R.S.A. 2000, c. V-3).
2*	Powers of Personal Representatives to Grant Options (June 1969)	An Act to amend The Wills Act, 1960, S.A. 1970, c. 114 (now Wills Act, R.S.A. 2000, c. W-12, s. 30). An Act to amend The Devolution of Real Property Act, S.A. 1970, c. 114 (now Devolution of Real Property Act, R.S.A. 2000, c. D-12, s. 12).
3*	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 2000, c. O-4).
4*	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 2000, c. A-6).
5*	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 2000, c. G-11) accepted. Recommendations for incidental amendments not acted upon.
6*	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 2000 c. P-5).
7*	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71.
8*	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now Fair Trading Act, R.S.A. 2000, c. F-2).
9*	Rule in *Saunders* v. *Vautier* (February 1972)	The Attorney General Statutes Amendment Act, 1973, S.A. 1973, c. 13, s. 12 amending the Trustee Act (now R.S.A. 2000, c. T-8, s. 42).

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	FINAL REPORT	ENACTMENT
10*	Powers of Maintenance and Advancement (June 1972)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 32, 34, 35, 36(3), 37).
11*	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 (now Law of Property Act, R.S.A. 2000, c. L- 7, ss. 10-13; Land Titles Act, R.S.A. 2000, c. L-4, ss. 68, 69, 119).
12*	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 2000, c. E-13).
13*	Judicature Act, Section 24 (August 1974)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193.
14	Minors' Contracts (January 1975)	
15*	Validity of Rules of Court (December 1974)	The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 6(4) amending the Judicature Act (now R.S.A. 2000, c. J-2, s. 63).
16*	Rule in *Hollington v. Hewthorn* (February 1975)	The Attorney General Statutes Amendment Act, 1976, S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act (now R.S.A. 2000, c. A-18, s. 26).
17*	Small Projects (June 1975)	The Workers' Compensation Amendment Act, 1976, S.A. 1976, c. 55, s. 2 (now Workers' Compensation Act, R.S.A. 2000, c. W-15, s. 20); The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 3 repealed the Bulk Sales Act, R.S.A. 1970, c. 37.

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	FINAL REPORT	ENACTMENT
18*	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 2000, c. M-8), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home.
19*	Consent of Minors to Health Care (December 1975)	
20*	Status of Children (June 1976)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
21*	Purchase by a Company of Shares Which It Has Issued (January 1977)	The Companies Amendment Act, 1977, S.A. 1977, c. 13, s. 2 (now Business Corporations Act, R.S.A. 2000, c. B-9, ss. 30 and 31).
22*	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now Residential Tenancies Act, R.S.A. 2000, c. R-17), based in large part on our recommendations.
23*	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 2000, c. L-7, ss. 14-19, 20-33).
24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 2000, c. S-27; Fatal Accidents Act, R.S.A. 2000, c. F-8, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 2000, c. L-12, s. 53).
25	Family Law Administration: the Unified Family Court (April 1978)	
26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

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	FINAL REPORT	ENACTMENT
27	Matrimonial Support (March 1978)	The Domestic Relations Amendment Act, 1977, S.A. 1977, c. 64 (now Maintenance Enforcement Act, R.S.A. 2000, c. M-1), establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); The Social Development Amendment Act, 1977 (No. 2), S.A. 1977, c. 92 (now Social Development Act, R.S.A. 2000, c. S-12, ss .14, 15); The Consumer and Corporate Affairs Statutes Amendment Act, 1978, S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act (now R.S.A. 2000, c. D-6, ss. 3(2), 3(3), 4(e)-(f), (6)). (Our proposals for change in the substantive law have not yet been implemented.)
28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5 (now R.S.A. 2000, c. M-20).
29	Family Relief (June 1978)	
30*	The Builders' Lien Act: Certain Specific Problems (March 1979)	Builders' Lien Amendment Act, 1985, S.A. 1985, c. 14 (now Builders' Lien Act, R.S.A. 2000, c. B-7).
31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	

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	FINAL REPORT	ENACTMENT
32	Guest Passenger Legislation (April 1979)	Proclamation 5 July 1979 of previously enacted The Alberta Insurance Amendment Act, 1977, S.A. 1977, c. 76, s. 6 (now Insurance Act, R.S.A. 2000, c. I-3, s. 310) (This is not the principal recommendation of the Report). Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 1 amending the Highway Traffic Act (now R.S.A. 2000, c. H-8).
33	Inter-Spousal Tort Immunity (April 1979)	Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 2 amending the Married Women's Act (now R.S.A. 2000, c. M-6, s. 2(3)) and s. 3 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27).
34*	Service of Documents During Postal Interruptions (June 1979)	The Service of Documents During Postal Interruptions Act, S.A. 1980, c. 88 (now Judicature Act, R.S.A. 2000, c. J-2, ss. 43-47).
35*	Defamation: Fair Comment and Letters to the Editor (October 1979)	The Defamation Amendment Act, 1980, S.A. 1980, c. 11 (now Defamation Act, R.S.A. 2000, c. D-7, s. 9).
36*	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15 (now R.S.A. 2000, c. B-9).
37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
38	The Uniform Sale of Goods Act (October 1982)	
39	Defences to Provincial Charges (March 1984)	

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	FINAL REPORT	ENACTMENT
40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17 (now Court of Queen's Bench Act, R.S.A. 2000, c. C-31).
41	Compensation for Security Interests in Expropriated Land (May 1984)	
42	Debt Collection Practices (June 1984)	See generally, Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
43	Protection of Children's Interests in Custody Disputes (October 1984)	
44	Statute of Frauds (June 1985)	
45*	Status of Children: Revised Report, 1985 (November 1985)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
46*	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987.
47	Survivorship (August 1986)	
48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987.

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	FINAL REPORT	ENACTMENT
50	Prejudgment Remedies for Unsecured Claimants (February 1988)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
51	Proposals for a New Alberta Arbitration Act (October 1988)	Arbitration Act, S.A. 1991, c. A-43.1 (now R.S.A. 2000, c. A-43).
52	Competence and Human Reproduction (February 1989)	
53	Towards Reform of the Law Relating to Cohabitation Outside Marriage (June 1989)	
54	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1989)	Business Corporations Act, S.A. 2000, c. 10, s. 2 (now R.S.A. 2000, c. B-9, s. 45).
55	Limitations (December 1989)	Limitations Act, S.A. 1996, c. L-15.1 (now R.S.A. 2000, c. L-12).
56	The Bulk Sales Act (January 1990)	Miscellaneous Statutes Amendment Act, 1992, S.A. 1992, c. 21, s. 5 (repealed the Bulk Sales Act).
57	Section 16 of the Matrimonial Property Act (March 1990)	Miscellaneous Statutes Amendment Act, 1991, S.A. 1991, c. 21, s. 24 amending the Matrimonial Property Act (now R.S.A. 2000, c. M-8, s. 16).
58	Division of Canada Pension Plan Credits in Alberta (November 1990)	
59	Enduring Powers of Attorney (December 1990)	Powers of Attorney Act, S.A. 1991 c. P-13.5 (now R.S.A. 2000, c. P-20).
60	Status of Children: Revised Report, 1991 (March 1991)	Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).

	FINAL REPORT	ENACTMENT
61	Enforcement of Money Judgments, 2 Vols., (March 1991)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
62	Proposals for the Reform of the Public Inquiries Act (November 1992)	
63	Section 195 of the Land Titles Act (February 1993)	Miscellaneous Statutes Amendment Act, 1994, S.A. 1994, c. 23, s. 26 amending the Land Titles Act (now R.S.A. 2000, c. L-4, s. 203).
64	Advance Directives and Substitute Decision–Making in Personal Health Care (March 1993) *(A Joint Report of the Alberta Law Reform Institute and the Health Law Institute)*	Personal Directives Act, S.A. 1996, c. P-4.03 (now R.S.A. 2000, c. P-6).
65	The Domestic Relations Act (DRA) – Phase 1. Family Relationships: Obsolete Actions (March 1993)	
66	Non-Pecuniary Damages in Wrongful Death Actions—A Review of Section 8 of the Fatal Accidents Act (May 1993)	Fatal Accidents Amendment Act, 1994, S.A. 1994, c.16 (now R.S.A. 2000, c. F-8).
67	Transfers of Investment Securities (June 1993)	
68	Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act (September 1993)	Miscellaneous Statutes Act, 1994, S.A. 1994, c. 23, s. 46 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 8(b), 47(1)(c), 47(3), 47(4)).
69	Proposals for a Land Recording and Registration Act for Alberta, 2 Vols., (October 1993)	Principles adopted in the Metis Settlements Land Registry Regulation (AR 361/91).
70	Mortgage Remedies in Alberta (June 1994)	
71	The Presumption of Crown Immunity (July 1994)	

*Publication out of print

	FINAL REPORT	ENACTMENT
72	Effect of Divorce on Wills (November 1994)	
73	Revision of the Surrogate Rules (Final Report) (May 1996)	The principal statutory amendments of Report for Discussion 10 anticipating the new rules were enacted in the Miscellaneous Statutes Amendment Act, 1992, c. 21, s. 47. The Rules and Forms were enacted by Alta. Reg. 130/95.
74	Protection Against Domestic Abuse (February 1997)	Protection Against Family Violence Act, S.A. 1998, c. P-19.2 (now R.S.A. 2000, c. P-27).
75	"Last Clear Chance" Rule (August 1997)	Justice Statutes Amendment Act, 2000, S.A. 2000, c. 20, s. 72 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27, s. 3).
76	Should a Claim for the Loss of a Chance of Future Earnings Survive Death? (December 1998)	Justice Statutes Amendment Act, 2002, c. 17, s. 8 amending the Survival of Actions Act (now R.S.A. 2000, c. S-27, s. 5).
77	Limited Liability Partnerships (April 1999)	Partnership Amendment Act, S.A. 1999, c. 27 (now R.S.A. 2000, c. P-3).
78	Reform of the Intestate Succession Act (June 1999)	
79	Powers and Procedures for Administrative Tribunals in Alberta (December 1999)	
80	Trustee Investment Powers (February 2000)	Trustee Amendment Act, S.A. 2001, c. 28.
81	Occupiers' Liability: Recreational Use of Land (February 2000)	
82	Cost of Credit Disclosure (February 2000)	Insurance Act, S.A. 1999, c. I-5.1, s. 855 and Miscellaneous Statutes Amendment Act, 1999, S.A. 1999, c. 26, s. 8 amending the Fair Trading Act (now R.S.A. 2000, c. F-2, Part 9, s. 66 and 69).
83	Division of Matrimonial Property on Death (May 2000)	

FINAL REPORT		ENACTMENT
84	Wills: Non-Compliance with Formalities (June 2000)	
85	Class Actions (December 2000)	
86	Non-Resident Trustees under the Dependent Adults Act (January 2002)	

*Publication out of print

	REPORTS FOR DISCUSSION	NOTE
1*	Protection of Trade Secrets (February 1984)	
2*	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)	
3*	Remedies of Unsecured Creditors (May 1986)	
4	Limitations (September 1986)	
5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)	
6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)	
7	Enduring Powers of Attorney (February 1990)	
8	Towards a New Alberta Land Titles Act (August 1990)	
9	Mortgage Remedies in Alberta (April 1991)	
10	Revision of the Surrogate Rules (October 1991)	
11*	Advance Directives and Substitute Decision–Making in Personal Health Care (November 1991)	
12	Non-Pecuniary Damages in Wrongful Death Actions — A Review of Section 8 of the Fatal Accidents Act (June 1992)	
13	Report on Liens (September 1992)	

Publication out of print

	REPORTS FOR DISCUSSION	NOTE
14	The Matrimonial Home (March 1995)	
15*	Domestic Abuse: Toward an Effective Legal Response (June 1995)	
16	Reform of the Intestate Succession Act (January 1996)	
17	Division of Matrimonial Property on Death (March 1998)	
18	Family Law (October 1998) 18.1 Overview 18.2 Spousal Support 18.3 Child Support 18.4 Child Guardianship, Custody and Access	
19	Order of Application of Assets in Satisfaction of Debts and Liabilities (September 2001)	

**Publication out of print*

	ISSUES PAPERS	NOTE
1	Towards a New Arbitration Act for Alberta (July 1987)	
2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)	
3	Public Inquiries (November 1991)	
4	Limited Liability Partnerships and Other Hybrid Business Entities (March 1998)	
5	Enduring Powers of Attorney (February 2002)	

	DISCUSSION PAPERS	NOTE
1	Civil Litigation: The Judicial Mini-Trial (August 1993)	

*Publication out of print

	RESEARCH PAPERS	NOTE
1*	Rent Control; Security of Tenures (November 1975)	
2*	Entry of Landlord; Locks and Security Devices (November 1975)	
3*	Obligation to Repair; Security Deposits (November 1975)	
4*	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)	
6*	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)	
7*	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)	
8*	Mobile Homes (November 1975)	
9*	Consent of Minors to Medical Treatment (May 1975)	
10	Illegitimacy (June 1974)	
11*	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)	
12*	Statute of Frauds (March 1979)	
13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioural and Social Sciences: March 1981)	

*Publication out of print

	RESEARCH PAPERS	NOTE
14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)	
15	Survey of Adult Living Arrangements: A Technical Report (November 1984)	
16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)	
17*	Corporate Directors' Liability (February 1989)	
18	Report on Referees (February 1990)	The principal recommendation of Research Paper 18 was implemented by Alta. Reg. 308/91.
19	Dispute Resolution: A Directory of Methods, Projects and Resources (July 1990)	
20	Court-Connected Family Mediation Programs in Canada (May 1994)	
21	Recognition of Rights and Obligations in Same Sex Relationships (January 2002)	

**Publication out of print*

CONSULTATION MEMORANDA

1 Division Of Pension Benefits Upon Marriage Breakdown (September 1995)

2 Reasonable Accommodation In The Workplace (November 1995)

3 Business Names Legislation (December 1996)

4 Should a Claim for Loss of Chance of Future Earnings Survive Death? (August 1997)

5 Should a Claim for Punitive Damages Survive Death? (December 1998)

6 Powers and Procedures for Administrative Agencies: Model Code (April 1999)

7 Trustee Investment Powers (September 1999)

8 Wills: Non-Compliance with Formalities (December 1999)

9 Class Actions (March 2000)

10 Standardizing Limitation Periods for Actions on Insurance Contracts (December 2001)

11 Creditor Access to Future Income Plans (June 2002)

PRACTICE MANUALS

Alberta Surrogate Forms

- Integration of rules and forms
- Comprehensive collection of forms
- Computer templates including completion instructions
- User notes

Arbitration Clauses Guide

- Checklists of procedural rules under the Act
- Discussion of sample clauses and agreements
- Complete set of procedural rules ready for adoption

**Publication out of print*

OTHER PUBLICATIONS

Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, The Council of Maritime Premiers, N.W.T., Ontario, Saskatchewan and Yukon) (July 1990)

Final Revisions. Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada. (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, N.W.T., Ontario, Saskatchewan and Yukon)
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